

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6391 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

S R S DANGE

Versus

GUJARAT AGRICULTURAL UNIVERSITY

Appearance:

MR BN PATEL for Petitioner
MR JR NANAVATI for Respondent No. 1
NOTICE SERVED for Respondent No. 3, 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 10/03/2000

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue an appropriate writ, order or direction to quash and set aside demand of recovery of market rent made by

the Campus Director, Gujarat Agricultural University, Junagadh from the petitioner for retention of Quarter at Junagadh from July 20, 1985 to January 27, 1987. The petitioner has further prayed to restrain the respondents from making any recovery of market rent for retention of Quarter at Junagadh by the petitioner from July 20, 1985 to January 27, 1987.

2. The petitioner was serving in Main Oilseeds Research Station at Junagadh, as he was in the employment of Gujarat Agricultural University. He was transferred as Professor (Plant Pathology) at College of Agriculture, Sardar Krishi Nagar by an order dated April 24/27, 1985. He was relieved from his post at Junagadh on May 29, 1985 with effect from May 31, 1985 after office hours. He joined his present post at Sardar Krishi Nagar on June 3, 1985. When the petitioner was serving at Junagadh, he was allotted a Quarter in Junagadh Campus. According to him, it was necessary to retain the said Quarter because his daughter was studying in a High School at Junagadh and his son was a student of B.B.A. at Junagadh. The case of the petitioner was that in the year 1985, because of anti-reservation agitation in the State, examinations were delayed and, therefore, he made a request by a letter dated June 19, 1985 to the respondent no.2 to permit him to retain the Quarter till June, 1985, as his children were required to stay at Junagadh in that year. The respondent no.2 by his letter dated July 12, 1985 rejected the request of the petitioner. That order is produced at Annexure-B to the petition. The petitioner made another representation dated July 20, 1985 and requested him to permit the petitioner to retain the Quarter at Junagadh. However, second representation was also rejected by the respondent no.2 vide order dated January 30, 1986, which is produced at Annexure-D to the petition. By the said order, the respondent no.2 had also asked the petitioner to pay market rent at the rate of Rs. 1011/- per month since July 20, 1985. After receipt of the said order, the petitioner represented his case by letter dated February 3/7, 1986 stating that in view of compelling circumstances, he was required to retain Quarter at Junagadh in educational interest of his children and, therefore, the market rent should not be recovered from him. By this representation, the petitioner also asked the respondent no.2 to furnish necessary particulars on the basis of which market rent at the rate of Rs. 1011/- per month was determined. The representation made by the petitioner was replied by the respondent no.2 vide letter dated February 14/18, 1986 giving particulars as to on what basis market rent was determined. The petitioner thereafter represented his

case before Vice Chancellor of the University on March 3, 1986 and requested him to permit retention of Quarter at Junagadh upto August, 1986. As the petitioner did not receive any reply, another representation was also made on August 29, 1986. Thereafter notice dated November 27, 1986 was issued to the petitioner by Administrative Officer of the University by which eviction proceedings were initiated. On receipt of the said notice, the petitioner by letter dated December 1, 1986 represented his case before the Campus Director and requested him to instruct the Administrative Officer to stay eviction proceedings in view of his representations which were pending for consideration by Vice Chancellor of the University. Ultimately the order of eviction was passed against the petitioner on December 22, 1986. The petitioner vacated the Quarter at Junagadh on January 27, 1987. Thereafter the petitioner was served with demand notice dated February 27, 1987 by the Principal of College of Agriculture at Sardar Krishi Nagar asking the petitioner to pay market rent of the Quarter at Junagadh at the rate of Rs. 1011/- per month from July, 1985 to January, 1987. A copy of the said demand notice is produced by the petitioner at Annexure-K to the petition. The petitioner again made a representation dated March 5, 1987 pointing out to the competent authority that the representations made to the Vice Chancellor were pending for his consideration and, therefore, recovery of market rent should not be effected. According to the petitioner, the petitioner was permitted to retain the Quarter upto January 27, 1987 by the Vice Chancellor as a special case and this decision was communicated to the petitioner by the Registrar of University vide his letter dated March 23, 1987 which is produced at Annexure-M to the petition. The Assistant Registrar of the University thereafter informed the petitioner by letter dated July 10, 1987 that though the petitioner was permitted to retain the Quarter as a special case, retention has nothing to do with the recovery of rent which was to be made in accordance with rules. A copy of said letter is produced by the petitioner at Annexure-N to the petition. The petitioner has mentioned in the petition that in view of the permission granted by the Vice Chancellor to the petitioner to retain the Quarter, the petitioner is not liable to pay market rent and, therefore, demand notice being illegal deserves to be set aside. What is claimed is that the case of the petitioner is squarely covered by Three Tier System introduced by the Gujarat Agricultural Employees (Housing Accommodation) Rules, 1977 and, therefore, demand of market rent being illegal, the petition should be accepted. It is emphasised in the petition that the petitioner was required to retain the

Quarter for the purpose of study of his children, as examinations of son of the petitioner studying in the course of B.B.A. were not held due to disturbed condition in the State and, therefore, demand of market rent being unjustified, relief claimed in the petition should be granted. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

3. Mr. C.M.Dholakia, Registrar, Gujarat Agricultural University, has filed reply affidavit controverting the averments made in the petition. In the reply, it is stated that the University has made Statute '42-A' in respect of allotment of Quarter to the staff and as demand of market rent is in terms of provisions of the said Statute, petition should be dismissed. What is averred in the reply is that on allotment of Quarter, liability to pay rent is regulated by the provisions of the Gujarat University Employees (Housing Accommodation) Rules, 1977 and as demand of market rent is in accordance with those Rules, the petitioner is not entitled to the reliefs claimed in the petition. Explaining as to why the petitioner is liable to pay market rent, it is mentioned in the reply affidavit that according to the rules, the petitioner was entitled to continue Quarter for a period of two months from the date of his transfer and if the transfer was made in the midst of academic term, he was required to take permission of the competent authority to enable him to occupy the Quarter upto the academic year and on grant of such permission, he was liable to pay usual rent, but the petitioner was relieved from Junagadh on May 31, 1985 and was, therefore, entitled to continue the Quarter only upto July 31, 1985 and not beyond the said period. It is also stated in the reply that the petitioner had vacated the Quarter on January 27, 1987 after initiation of eviction proceedings and, therefore, he was liable to pay market rent as per the statutory rules. It is further mentioned in the reply affidavit that permission granted by the Vice Chancellor to the petitioner to retain the quarter in question has nothing to do with the recovery of market rent as explained in the subsequent letter and, therefore, on the basis of permission granted by the Vice Chancellor to retain the quarter, the petitioner is not entitled to claim the reliefs prayed for in the petition. By filing the reply, it is emphasised that challenge to demand notice of market rent is without any basis and, therefore, the petition should be dismissed.

4. Mr. B.N.Patel, learned Counsel for the petitioner submitted that academic term of the son of the

petitioner was over in November, 1985 and, therefore, the petitioner would be liable to pay regular rent of the premises from July 20, 1985 to November, 1985 and as the Vice Chancellor had permitted the petitioner to occupy the accommodation at Junagadh upto January 27, 1987, the petitioner would be liable to pay twice the standard rent of the accommodation under 2nd Tier System introduced in Rule 11 of the Rules from December, 1985 to May, 1986 and thereafter he would be liable to pay market rent as contemplated by 3rd Tier System till January 27, 1987 and, therefore, the impugned recovery of market rent from July 20, 1985 till January 27, 1987 should be quashed.

5. Mr. J.R.Nanavati, learned Counsel for the respondents submitted that the petitioner is liable to pay market rent after expiry of two months from the date of relinquishing the charge and, therefore, recovery of market rent which is sought to be made from July 20, 1985 to January 27, 1987 should not be regarded as illegal. It was claimed that permission granted by the Vice Chancellor of the University to the petitioner to occupy premises upto January 27, 1987 cannot be considered to mean that the petitioner is not liable to pay market rent after expiry of period of 2 months from the date of relinquishing the charge and, therefore, the petition should be dismissed.

6. I have heard the learned Counsel for the parties and taken into consideration the documents which are on record of the petition. In order to resolve the controversy between the parties, it would be relevant to notice certain dates. The petitioner, who was serving at Junagadh, was transferred to College of Agriculture, Sardar Krishi Nagar at Dantiwada by an order dated April 24/27, 1985. He was relieved from the Office w.e.f. May 31, 1985 and had joined the transferred post on June 3, 1985. The fact that son of the petitioner was a student of B.B.A. at Junagadh and his examinations were held in the month of November, 1985, is not in dispute. It is also not in dispute that the Vice Chancellor of the Gujarat Agricultural University had permitted the petitioner to occupy the premises at Junagadh upto January 27, 1987 by his order dated February 17, 1987. It may be stated that the Gujarat Agricultural University has made Rules known as "The Gujarat Agricultural University Employees (Housing Accommodation) Rules, 1977 ("the Rules" for short) and allotment of quarters to employees is governed by the said Rules. The above referred to rules were amended in September 1984 and three Tier System which was introduced in Rule 11 is as under :

"Rule : 11

I. 1st Tier System

Under this System, the University employee shall be eligible to retain University accommodation on the happening of any events specified in column 1 of the table below for the period specified in the corresponding entry in column 2 thereof.

Events Permissible period for retention
 of the University quarter.

- (i) Resignation, dismissal 1 month
 removal or termination
 of service.
- (ii) Retirement of terminal 2 months
 leave
 (This should commence after
 completion of terminal leave and
 should not be emerged in it in
 the case of a retired University
 employee).
- (iii) Death of the Uni. employee 4 months
- (iv) Transfer to place outside 2 months
 the station of allotment of
 the Uni. quarter.
- (v) Deputation to a post outside 2 months
 the control of the present
 Department.
- (vi) On foreign service in India 2 months
- (vii) Transfer to a place outside 4 months
 India.
- (viii) Study leave or deputation For the period of
 (A) outside India leave but not
 (B) within India exceeding 6 months

For the period of
 leave but not
 exceeding 2 months.

Note below items (iv) and (vii)

If the transfer takes place during the midst of an academic year, university employee can obtain the permission of the allotment authority for retention of the university accommodation upto the end of the academic year showing the details of his/her children studying in School/Colleges etc.

EXPLANATION :

(a) The period permissible on transfer mentioned against item nos. (iv), (v), (vi) and (vii) shall count from the date of relinquishing charge plus the period of leave if any sanctioned to and availed of by the University employee before joining duty at the new office.

(b) During the period of retention of the University accommodation including the period of extension allowed as per Notes below item Nos. (iv) and (vii) the rent recoverable would be same as was being recovered before the events took place. However, the upward increase that had taken place in the emoluments of the University employees since they relinquished their charges shall be taken into account in the calculation of the rent recoverable.

II. 2nd Tier System :

In case of University employees who by necessity and peculiar circumstances of the individual cases wish to continue to retain university accommodation beyond the period mentioned in the 1st Tier shall have to make an application to the competent authority with sufficient data and details. The competent authorities can grant the permission after taking into account all these factors upto a period of 6 months or lesser period as may be deemed fit on payment of twice the standard rent of the university accommodation. The decision taken by the competent authority will be intimated both to the Accommodation Allotment Committee and to the Campus Engineer or Director of Campus. The competent authority shall not allow this concession beyond the period stipulated. The Campus Engineer or Director of Campus would issue demand notice showing the rent recoverable at the rates mentioned above.

III. 3rd Tier System :

Any further occupation of the University accommodation beyond the period mentioned in 2nd Tier System should be considered as 'unauthorised occupation'

and eviction proceeding should be started immediately against the university employees. Pending the initiation and finalisation of the eviction proceeding, the rent worked out on the basis of the formula mentioned below should be recovered from the unauthorised occupants. The market value of the land and building prevailing at the time of issue of first demand notice under this tier should be considered instead of their book value while operating this formula for calculating the recoverable rent. It would be the personal responsibility of the Campus Engineer or Director of Campus to see that the eviction proceedings are initiated without any delay and the rent demand statement showing the calculations are issued every month to the Disbursing Officers. Failure on the part of the Disbursing Officers to recover rent as per demand statements should be promptly reported to the Campus Engineer or Director of Campus.

FORMULA

Building (a) x 14% + Municipal Taxes

Land (b) x 9%

Sanitary

Water

Supply (c) x 17 1/2%

Electrical installations"

5. A close scrutiny of the above-referred to Three Tier System makes it manifest that an employee who is transferred to a place outside the station of allotment of university quarter, is entitled to retain the quarter initially for a period of 2 months. If the transfer takes place during the midst of academic year, the university employee can obtain permission of the allotment authority for retention of the university accommodation upto the end of the academic year and on such permission being granted, the rent recoverable is the same as was being recovered before the transfer took place. Under the 2nd Tier System, the competent authority has power to grant permission to an employee to retain the university accommodation upto the period of six months and in that case the university employee would be liable to pay twice the standard rent of the accommodation. However, under the 3rd Tier System, an employee is liable to pay the market rent beyond the period of six month as contemplated by 2nd Tier System. A conjoint reading of the Rules shows that the petitioner would be liable to pay regular rent of accommodation at Junagadh which he was paying before his transfer till the end of academic year, meaning thereby till the end of November, 1985, as the academic term in the year 1985 had ended in the month of November, 1985. In view of the

permission granted by the Vice Chancellor of the University enabling the petitioner to occupy the quarter at Junagadh upto January 27, 1987, the petitioner would be liable to pay twice the standard rent from December, 1985 till May, 1986 under the 2nd Tier System and thereafter he would be liable to pay market rent till January 27, 1987. The contention of the respondents that after expiry of period of 2 months from the date of relinquishing the charge, the petitioner would be liable to pay market rent cannot be accepted because that would amount to re-writing statutory rules. The petitioner has not been able to point out that the market rent fixed by the respondents is in any way erroneous or illegal. Under the circumstances, I am of the opinion that the action of the respondents in recovering market rent of the accommodation at Junagadh from the petitioner for a period from July 20, 1985 to January 27, 1987 is contrary to statutory provisions and cannot be upheld.

For the foregoing reasons, the petition partly succeeds. The action of the respondents in recovering market rent of the premises from July 20, 1985 to January 27, 1987 is set aside. It is held that the petitioner would be liable to pay regular rent of the accommodation which he was paying before his transfer from Junagadh for a period from July 20, 1985 to November, 1985. Thereafter the petitioner would be liable to pay twice the standard rent of the accommodation for a period from December 1985 to May, 1986 and from June, 1986 till January 27, 1987 he will be liable to pay market rent. The respondents are directed to recover rent from the petitioner as indicated above. This exercise shall be done by the respondents as early as possible and preferably within two months from today. If on calculation it is found that excess amount is recovered from the petitioner, the same shall be refunded to the petitioner within 4 weeks of taking the decision. It is also clarified that if on calculation it is found that the respondents have to recover rent from the petitioner, they will be entitled to deduct the same from the salary payable to the petitioner. Rule is made absolute accordingly, with no order as to costs.

10.3.2000 (J.M.Panchal, J.)

(patel)